The Long Island College Hospital *and* Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL–CIO. Cases 29–CA–8460 and 29–CA–4562

March 12, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On October 19, 1992, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The judge sets forth the long legal history of these employees' attempts to secure a bargaining representative beginning with the state labor board and court and progressing through this Board and the Federal courts. We agree with the judge that a bargaining order is the appropriate and only effective remedy for the Respondent's refusal to bargain following the Union's certification, despite the passage of time and the turnover of employees in the unit. As explained below, we conclude that issuance of a bargaining order will best effectuate the central policies of the Act.

''The central purpose of the Act [is] to protect and facilitate employees' opportunity to organize unions to represent them in collective-bargaining negotiations.'' *American Hospital Assn. v. NLRB*, 111 S.Ct. 1539, 1541–1542 (1991). Here, the Union was certified in an appropriate unit in 1980 after a Board election in 1979. Therefore, our remedial choice is not between a bargaining order or an election in the first instance, but between a bargaining order or ordering a second Board election, with the prospect for additional delay. We recognize the basic point that it would be inappropriate to refuse to issue a bargaining order where, as here, there has been a Board election, the Union was certified, and the Company thereafter has refused to bargain. *NLRB v. Patent Trader*, 426 F.2d 791, 792 (2d Cir. 1970). To require still another Board election in such circumstances, would undermine the central purpose of the Act. It would give an employer an incentive to disregard its duty to bargain in the hope that, over a period of time, the union would lose its majority status or would abandon the unit, and the employer would then not be required to bargain or could seek a new election. *Patent Trader*, supra, 426 F.2d at 792.

Consequently, the passage of time and turnover since the Union was certified do not warrant denial of a bargaining order remedy.[2] Inordinate delay in any case is regrettable. However, employees are in no way responsible for the fact that the Union has not yet had an opportunity to bargain for the unit. The delay in this case is largely attributable to the continuing confusion engendered by lengthy litigation over the issue of the appropriateness of bargaining units in the health care industry. As the Supreme Court and Seventh Circuit recognized in affirming the Board's authority to engage in substantive rulemaking to decide appropriate collective-bargaining units in acute care hospitals like the Respondent's, it was not unreasonable for the Board to substitute clear rules for loose and fluctuating standards that were repeatedly rejected by the courts of appeals. The propriety of those rules was not finally resolved until 1991.

Here, the Respondent attempts to rely on the interim changes in the law in this area to avoid a valid certification with which it refused to abide. We refuse to let

[1] Member Oviatt finds that even assuming arguendo that the ''disparity-of-interests'' analysis announced in *St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*), is more applicable here, as the Respondent contends, that standard has been satisfied. As shown by the judge, the petitioned-for unit is appropriate under traditional community-of-interest criteria, and, in Member Oviatt's view, sharper than usual differences separate the maintenance-of-plant and engineering department employees from the Respondent's other nonprofessional hospital employees. In this latter regard, Member Oviatt specifically relies, inter alia, on the following: the Board's 1979 Local 1199 service unit certification expressly excludes the maintenance and engineering employees; the Board's 1981 Local 1199 technical unit certification specifically excludes service employees and maintenance and engineering employees; during a 1984 strike by the Respondent's Local 1199-represented employees, the maintenance and engineering department employees crossed Local 1199's picket line; and the petitioned-for skilled maintenance unit employees have maintained a cohesive solidarity throughout a 30-year legal sojourn to obtain separate representation.

In finding the unit appropriate, Member Raudabaugh relies solely on the community-of-interest standard that was extant at the time of the original unit determination, election, and certification. In addition, although he does not apply the Board's Health Care Rule to this case, he notes that application of the community-of-interest standard to this case results in a unit that is consistent with the Rule.

[2] As the judge correctly noted, cases in which the passage of time plus employee turnover have resulted in judicial refusal to enforce a bargaining order within a postelection certification year have involved the Board's failure to hold hearings on prima facie valid postelection challenges, which would have required setting aside the elections. *NLRB v. Connecticut Foundry*, 688 F.2d 871 (2d Cir. 1981); *NLRB v. Nixon Gear*, 649 F.2d 906 (2d Cir. 1981). Passage of time and turnover were relevant there because the court's only options were remanding and extending the delay or simply denying enforcement. There was no option, as here, to enforce a bargaining order. Further, delay and turnover were relevant in those cases because fading memories and unavailable witnesses might preclude a fair hearing and a reliable determination of the challenges. No such considerations are present here.

it do so. The Supreme Court long ago recognized that allowing an employer to invoke delays incident to Board proceedings to justify a refusal to bargain with a union which represented a majority of the employees at the time of the employer's wrongful refusal to bargain, even despite that union's subsequent failure to retain its majority, a mitigating fact not shown here, would improperly permit employers to profit from their own wrongful refusal to bargain. *Frank Bros. Co. v. NLRB*, 321 U.S. 702, 704–705 (1944). A fortiori, this reasoning applies here where there has been a Board election (held in accordance with the Second Circuit's remand order), the Union had been certified, and the Respondent has continuously refused to bargain in good faith. *NLRB v. Patent Trader*, supra. The Respondent has enjoyed the fruits of its unlawful refusal to bargain during the period of delay. We will not visit the consequences of delay on the wronged employees to the benefit of the wrongdoing employer. *NLRB v. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 264–265 (1969).

This remedy, in any event, does not fix a permanent bargaining relationship without regard to new circumstances that may develop.[3] We conclude that here a bargaining order best effectuates the central purpose of the Act by recognizing that a bargaining relationship once rightfully established must be permitted to exist and function throughout the certification year, so as to give the relationship a fair and reasonable chance to succeed.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Long Island College Hospital, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[3] Of course, current employees have the statutory right to petition for decertification of the bargaining representative where appropriate, if they choose to do so. See *NLRB v. Star Color Plate Service*, 843 F.2d 1507, 1510 (2d Cir. 1988).

David S. Cohen, Esq., for the General Counsel.
Joel E. Cohen, Esq. (Kelley Drye & Warren, Esqs.), of New York, New York, for the Respondent.
James Wasserman and *Hanan B. Kolko, Esqs. (Vladeck, Waldman, Elias & Engelhard, P.C.)*, of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge filed on November 21, 1980, by Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL–CIO (Local 144), a complaint was issued against The Long Island College Hospital (Respondent) on December 30, 1980. The complaint alleges, essentially, that on October 1, 1980, and since that date, Respondent refused to bargain with Local 144 which had been certified by the Board in August 1980 pursuant to a Board election held in January 1979 in a unit consisting of maintenance of plant and engineering department employees.

Respondent's answer to the complaint denied the material allegations thereof, and asserted certain affirmative defenses.[1] Those affirmative defenses included that the unit set forth in the complaint was inappropriate for the purposes of collective bargaining.

A hearing was held before me in Brooklyn, New York, on August 6, 1992.

On the evidence presented in this proceeding, and my observation of the demeanor of the witness and after consideration of the briefs filed by all parties on September 4, 1992, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation having its office and place of business at 340 Henry Street, Brooklyn, New York, is engaged in the operation of a nonprofit hospital, providing medical and other health-related services. During the past year, Respondent derived gross revenues in excess of $250,000 from its business operations, and also during the same period purchased goods valued in excess of $10,000 from vendors located outside New York State, which were shipped directly to its New York facility.

Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find that it is a health care institution within the meaning of Section 2(14) of the Act.

Respondent also admits and I find that Local 144 is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

A. *The State Labor Relations Board Proceedings*

In July 1964, Respondent's maintenance and engineering employees voted in a self-determination election conducted by the New York State Labor Relations Board (SLRB) to be represented by Local 144. On December 28, 1964, the SLRB certified Local 144 as the representative of those employees.

Respondent refused to bargain with Local 144, asserting, inter alia, the inappropriateness of the unit, and Local 144 sought review through a provision of the New York State Labor Relations Act (SLRA) providing for mediation, fact-finding, and binding arbitration of disputes in the nonprofit hospital industry. In November 1968, the New York Court of Appeals held that resort to the arbitration provisions of the SLRA was inappropriate. *Long Island College Hospital v. Catherwood*, 23 N.Y.2d 20 (1968), appeal dismissed, *Ottley v. Long Island College Hospital*, 394 U.S. 716 (1969).

[1] Respondent's answer was amended at the hearing to admit the filing and service of the charge, and to admit a conclusionary paragraph concerning the Board's jurisdiction over it.

Respondent then moved that the SLRB vacate the certification as stale and unenforceable due to the passage of time and changes in the composition of the unit. The SLRB denied the motion. In May 1969, Local 144 filed a refusal-to-bargain charge against Respondent with the SLRB. Following a hearing, the SLRB found that Respondent had refused to bargain with Local 144 in the unit certified. This finding was ultimately upheld by the New York Court of Appeals. *Long Island College Hospital v. New York State Labor Relations Board*, 32 N.Y.2d 314, 85 LRRM 2580 (1973), cert. denied 415 U.S. 957 (1974).

Respondent thereupon began to bargain with Local 144, nevertheless continuing to assert the inappropriateness of the unit. Following the amendments of the National Labor Relations Act (the Act) in 1974 pursuant to which Respondent became subject to the Act, Respondent refused to bargain with Local 144.

B. *The Proceedings Before the Board*

On September 8, 1975, Local 144 filed a charge with the Board which alleged that Respondent refused to bargain with it for the unit consisting of maintenance of plant and engineering department employees. A complaint was issued, and following a hearing held before Administrative Law Judge Michael O. Miller, the Board found that Respondent violated the Act by refusing to bargain. The Board extended comity to the SLRB certification. *Long Island College Hospital*, 228 NLRB 83 (1977).

On review, the Second Circuit Court of Appeals vacated the Board's Order. The court held that the Board improperly accepted the certification issued by the SLRB as its own. The court, noting the length of time that had passed—13 years since the election—and the high turnover in the unit since that time, remanded the matter to the Board with directions to make ''its own determination of an appropriate bargaining unit . . . and thereupon to hold a representation election.'' *Long Island College Hospital v. NLRB*, 566 F.2d 833 (2d Cir. 1977).

On remand, Respondent argued that the unit was inappropriate, and further stated that the smallest appropriate unit should include all service, maintenance, and related technical employees.

Pursuant to the remand, the Board issued a Supplemental Decision and Direction of Election, finding the unit consisting of maintenance of plant and engineering department employees appropriate. The Board considered the evidence at the hearing conducted by Judge Miller, and the statements of position of the parties, including an affidavit of Respondent's official.

The Board made the following findings concerning the operations at Respondent at that time.

Respondent employs about 2200 employees, of whom 540 are service employees, and about 69 are nonclerical, nonsupervisory maintenance, and engineering employees employed in its maintenance and engineering department, which is supervised by the director of engineering. That person almost exclusively dispatches and supervises the department's maintenance employees.

The Board found that the employees in the unit consisted of 2 incinerator men, 8 laborers, 5 helpers, 6 firemen, 36 maintenance men, 3 lead maintenance men, 1 refrigeration mechanic, 1 preventive maintenance man, 2 boiler mechanics, and 5 watch engineers.

The maintenance personnel paint and maintain and repair light fixtures, toilets, plumbing, faucets, and ceiling tiles. Other maintenance men operate and maintain low-pressure boilers and maintain window air-conditioning units. Still other maintenance employees, about 14, are involved in building alterations and construction. The laborers clean and operate the Somak machine which pulverizes and liquefies waste. The watch engineers are licensed by the city of New York.

The Board found that, although prior craft experience is not a prerequisite for hire, the personnel department requires general handyman experience for employees in the department, and Respondent provides on-the-job training to the more highly skilled maintenance employees.

The Board also found that although the maintenance employees spend most of their time performing tasks throughout the hospital, they have limited contact with nonmaintenance workers, and further, there is virtually no functional integration with work performed by service employees, no day-to-day interchange between the unit employees and service employees, and limited permanent transfers between the unit at issue and the service unit. The Board also found that the wage rates received by the maintenance and engineering employees are generally higher than those of the service employees.

The Board gave little weight to evidence of common benefits and working conditions such as holidays, vacations, sick leave, and insurance, enjoyed by all Respondent's employees because such benefits were shared by professionals as well as nonprofessional employees.

Pursuant to the remand of the court of appeals, the Board, having found the unit of maintenance of plant and engineering department employees to be appropriate, directed that an election be held. Excluded from the unit were maintenance department clericals, on the ground that they frequently interchange with nonmaintenance department employees, and biomedical technicians, on the ground that they are separately supervised and possess greater skills than maintenance employees. *Long Island College Hospital*, 239 NLRB 1135 (1978).

On January 25, 1979, the Board conducted an election, which resulted in a majority of voters voting for Local 144. District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL–CIO (Local 1199) also appeared on the ballot. The Respondent filed objections to the election, which were overruled, and on August 27, 1980, the Board certified Local 144 as the collective-bargaining representative in the following unit:

> All full-time and regular part-time employees in the maintenance of plant and engineering department, excluding chief engineers, assistant chief engineers, clerk and maintenance supervisors, as defined in Section 2(11) of the Act.

On September 24, 1980, Local 144 requested that Respondent negotiate with it. On October 1, Respondent refused, asserting the inappropriateness of the certified unit.

Thereafter, on November 21, 1980, the instant charge was filed, and thereafter, this complaint was issued. Following the

filing of Respondent's answer, a Motion for Summary Judgment was filed with the Board by counsel for the General Counsel. On September 17, 1984, the Board issued an order denying the motion, and remanding the matter for the Regional Director's further consideration consistent with *St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*), ''including, if necessary, a reopening of the record in the representation case and the issuing by the Regional Director of a Supplemental Decision, if appropriate.''

Subsequently, the Regional Director issued an order and notice of hearing for the purpose of adducing evidence on the appropriateness of the unit in light of *St. Francis II*.

Following a hearing conducted by a hearing officer during the period November 1984 to June 1985, the Regional Director, on October 29, 1985, issued a supplemental decision in which he found that a bargaining unit limited to that alleged here was inappropriate and did not meet the ''disparity of interest'' test set forth in *St. Francis II*. The Regional Director recommended that the Board set aside its Supplemental Decision and Direction of Election, vacate the election of January 1979 and the certification which resulted from that election, and withdraw or dismiss the instant complaint. The record in that hearing was received in evidence at the instant hearing.

Local 144 requested review of the Regional Director's supplemental decision, and on May 1, 1986, the Board granted the request for review as it raised substantial issues warranting review.

In March 1987, the U.S. Court of Appeals for the District of Columbia rejected the Board's disparity-of-interest test and remanded *St. Francis II* to the Board. *Electricial Workers IBEW Local 474 v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987).

Thereafter, the Board held hearings concerning its proposed rulemaking for the purpose of determining collective-bargaining units in the health care industry. On April 21, 1989, the Board issued its Final Rule on Collective-Bargaining Units in the Health Care Industry. 284 NLRB 1596 (1989).

On April 23, 1991, the Supreme Court rejected a challenge to the Board's authority to make the Final Rule. *American Hospital Assn. v. NLRB.*, 111 S.Ct. 1539 (1991).

On June 13, 1991, the Board issued a Decision and Order, granting Local 144's request for review of the Regional Director's supplemental decision. The Order stated that the Final Rule is now effective, and the Board thereupon remanded the matter to the Regional Director for further proceedings consistent with the Final Rule. The Board also stated that the parties would be given an opportunity to address this issue and its applicability to this case.

On June 16, 1992, an order rescheduling hearing was issued by the Regional Director, setting a hearing in this matter for August 1992.

On June 29, 1992, Local 144 filed a petition for a writ of mandamus with the Second Circuit Court of Appeals, seeking to have the Board issue a final order in this case. The Board opposed the petition. On August 11, 1992, the court denied the petition with leave to renew it after 90 days.

As set forth above, this hearing was held on August 6, 1992.

C. *Positions of the Parties*

The General Counsel and Local 144 argue that the bargaining unit certified by the Board in 1979 and alleged in the complaint issued in 1980 was an appropriate bargaining unit under the Board's Rules prevailing then and should not be disturbed, and continues to be an appropriate bargaining unit at this time, pursuant to the Board's Final Rule. The General Counsel further argues that if the Final Rule is not applied to this case, the bargaining unit alleged should be found appropriate under the community-of-interests standard applied by the Board in 1978. Moreover, he urges that if the Final Rule is not applied here, it should be examined for guidance in determining the unit issue.

Accordingly, the General Counsel seeks a finding that Respondent refused to bargain with Local 144 since October 1, 1980, following the Board's certification of that Union following the 1979 election.

Respondent argues that the bargaining unit alleged in the complaint has been inappropriate at all times. It further states that such a finding of inappropriateness was made when, in October 1985, the Regional Director found that the unit did not meet the disparity-of-interest test in *St. Francis II* and recommended that the election and certification be vacated and the instant complaint dismissed or withdrawn. Respondent further argues that it cannot be found to have violated the Act during the period of time when the *St. Francis II* test was applicable, and therefore the complaint, which alleges that Respondent refused to bargain since October 1980, is defective and must be dismissed.

Thus, Respondent argues that if it did not commit a violation in 1985 by refusing to bargain with Local 144, it cannot be found to have violated the Act now by refusing to honor the same certification.

Respondent further argues that it has been prejudiced because, following the Regional Director's issuance of the supplemental decision in October 1985, the instant complaint should have been immediately dismissed, as recommended by the Regional Director. However, no final decision was issued by the Board at that time. Rather, this case was held in abeyance first pending a review of the *St. Francis II* standard, and then pending the rulemaking hearings, and the issuance of the Final Rule. Respondent argues that had this case been ''unfrozen'' at any time prior to the issuance of the Final Rule, it would have been decided under the *St. Francis II* standard and would have been dismissed, as recommended by the Regional Director. *St. Vincent Hospital*, 285 NLRB 365 (1987).

Respondent therefore argues that this case must be decided pursuant to *St. Francis II*.

Respondent urges that if a violation is found, a bargaining order is an inappropriate remedy under the circumstances of this case. Respondent argues that such a remedy would be improper considering the length of time since the 1979 certification, and the extent of employee turnover during that time. It notes that the delay was not caused by it, but rather by the Board's holding the case in abeyance. Respondent concludes that imposing a bargaining order remedy on it, and imposing a labor organization on employees who have not had an opportunity to select a union, improperly frustrates employee rights. Respondent suggests that, assuming a violation is found, an election should be ordered.

D. *The Law to be Applied*

The complaint alleges, and Respondent admits, that since about October 1, 1980, it has refused to recognize and bargain collectively with Local 144 as the exclusive collective-bargaining representative of its employees in the following unit:

> All full-time and regular part-time employees in the maintenance of plant and engineering department, excluding chief engineers, assistant chief engineers, clerk and maintenance supervisors, as defined in Section 2(11) of the Act.

As set forth above, the General Counsel argues that the unit found appropriate in 1979, which was the certified unit, should not be disturbed. In the alternative, he contends that the Final Rule or the community-of-interests standard should be applied in determining the appropriateness of the unit.

Local 144 notes that the Final Rule states that it applies to all cases decided on or after May 22, 1989 (Sec. 103.30(e), 284 NLRB at 1597), and thus argues that because this case is being decided after that date, the Final Rule applies to this decision.

In its second notice of proposed rulemaking, the Board stated that the Final Rule ''regarding appropriate units in the health care industry shall apply to all decisions made on and after the effective date of the rule.'' However, as to cases currently pending before it which do not ''issue prior to the rule's effective date, the Board will not apply the rule *de novo* to such cases, but will, where necessary, remand such pending cases to regional directors to determine the need for a hearing or other appropriate course of conduct in order to permit parties to address the rule.'' 284 NLRB at 1572.

The Board's June 1991 Decision and Order, granting the request of Local 144 for review, stated that this matter was remanded for further proceedings ''consistent with the Final Rule.'' The Board also stated that the parties would be given an opportunity to address ''this issue and its applicability to this case.'' That statement was apparently a reference to the Board's second notice of proposed rulemaking, cited above.

Respondent argues that *St. Francis II* must be applied. In *St. Vincent*, supra, the Board applied ''existing law'' to pending representation cases until the Final Rule was issued. Respondent further argues that the Final Rule applies exclusively to representation cases and not unfair labor practice cases, such as this case, and that a retroactive application of the Final Rule violates the Administrative Procedure Act.

I believe that this case must be decided by looking at two standards: the law as it existed when the alleged violation first occurred on October 1, 1980, and the current state of the law.

In 1980, the Board determined the appropriateness of a unit in the health care industry by examining it pursuant to a community-of-interests standard. At this time, the Board determines the appropriateness of such a unit pursuant to the Final Rule.

I do not believe that it would be appropriate to analyze the unit pursuant to *St. Francis II* as urged by Respondent. That case was applied to cases decided during the pendency of the issuance of the Final Rule. *St. Vincent*, supra. Here, however, the Final Rule has issued. Moreover, *St. Francis II* constituted the law as to this issue for a brief period of time, and is no longer applicable in determining the appropriateness of collective-bargaining units in the health care industry. Since *St. Francis II* the Board has changed its policy concerning the determination of appropriate collective-bargaining units in the health care industry, and I do not believe it may be appropriately used to analyze this case. Although it is true that the Regional Director made a determination that the unit here was inappropriate under *St. Francis II*, the Board made no finding on that issue at the time, pursuant to a request for review by Local 144.

It is also true, as argued by Respondent, that had the Board denied the request for review during the time that *St. Francis II* was the applicable law, the instant complaint would have been dismissed. However, that issue is not before me.

As to Respondent's argument that the Final Rule is applicable to the determination of the appropriate collective-bargaining units in representation cases only, this unusual case, although before me as an unfair labor practice case, has representational case aspects. A petition was filed with the SLRB, and although no petition has been filed with the Board, the Second Circuit Court of Appeals directed that an election be held, and thereafter, an election was held among the employees in this unit.

E. *The Facts*

The parties stipulated that, to the extent not contradicted by the record in the instant hearing, the facts contained in the record made in 1984–1985 before a hearing officer are still applicable to Respondent and its employees today, and that the facts remain the same. As set forth above, the record in the 1984–1985 hearing was received in evidence here.

Respondent, a nonprofit hospital located in Brooklyn, New York, has 630 beds and employs more than 2000 employees.

Respondent employs the following nonsupervisory employees in separate units represented by Local 1199: about 800 to 850 employees in a service unit; about 150 employees in a technical unit; and about 150 employees in a nonnursing professional unit. The New York State Nurses Association represents about 550 registered nurses in a unit consisting of registered nurses.

In 1985, Respondent employed 70 to 80 nonsupervisory employees in the unit at issue here, the maintenance of plant and engineering department employees. By the time of the instant hearing, there were about 56 employees in that department. Of those 56 currently employed, 20 were employed in the unit at the time of the 1979 election. Thus, about 35 percent of the current unit was employed in the unit at the time of the election.

The department of engineering, as it is called now, is responsible for maintaining and repairing all the buildings and physical plant of Respondent. It employs workers who operate and repair heating, ventilation, and air-conditioning equipment and electrical, mechanical, and plumbing systems.

The department of engineering has as its head, the director of engineering, currently Ronald Williams, who is in overall charge of the day-to-day activities of the department. Williams testified at the instant hearing as to differences in the department since 1981, when he became employed by Respondent as the assistant director of engineering. Williams makes the final decisions with respect to the hire of the department's employees, and, subject to review by Respond-

ent's human resources department, makes decisions concerning the discharge of such employees. Williams reports to Respondent's vice president for support services, who reports to the executive vice president for administration, who reports to the president of Respondent.

The department of engineering is organized with five groups of employees ultimately responsible to Williams. Those groups are the maintenance department, the electrical department, the HVAC (heating, ventilation, air-conditioning) department (also known as the engineering department), the construction group, and the dispatcher.[2]

Three of the groups are headed by statutory supervisors who report to an assistant director of engineering, who reports to Williams, the director. Those three supervisors are the maintenance manager, the electrical manager, and the chief engineer.

The other two groups are the construction group, which is headed by a project engineer[3] who reports to Williams, and the office manager, who is in charge of a secretary and the dispatcher. The project engineer and office manager are also statutory supervisors.

The supervisors in all the groups set forth above make assignments to the employees in their group. Employees within one group are not assigned to perform work within the other groups.

Current job descriptions of all classifications of employees were received in evidence, and certain of them were testified to.

The engineering department employees have a locker room in the basement of one of Respondent's buildings. No other hospital employees use that room. The shops for the various engineering department groups are also located in that building. All engineering department employees except the boilerroom workers punch a timeclock at that building. It should be noted that employees who work in accounts payable, purchasing, and the printshop punch the same timeclock in the same building as the engineering department employees.

1. Maintenance department

The maintenance department, a group supervised by the maintenance manager, has employees within it in the following classifications: maintenance mechanic, maintenance worker, carpenter A, carpenter B, painter A, painter B, plumber A, plumber B, mason/plasterer, and preventive maintenance coordinator. There are 17 budgeted nonsupervisory positions in the maintenance department.

No special skills are required for the maintenance mechanics or maintenance workers. They learn their jobs through on-the-job training. The maintenance mechanics make repairs to plumbing leaks or repairs to walls. They help the carpenters, painters, plumbers, and masons in their work. They do preventive maintenance work that the preventive maintenance coordinator assigns, such as repairing a light or a nurse's call bell that is not working, a hole in the wall, or a leaky faucet.

The maintenance workers work with the maintenance department employees, assisting the carpenters, painters, and plumbers. They work as general helpers.

The carpenter A is a skilled carpenter who makes furniture, repairs and installs door checks, and hangs doors. Carpenter B persons assist the carpenter A people.

The painters are engaged in interior painting, and to a minor extent, exterior painting.

The plumbers generally perform maintenance plumbing, such as repairing leaks. They are not licensed, and licenses are not required by Respondent. They receive on-the-job training. The plumber A does major replacement and repairs, including repairs of broken piping. The plumber B does minor repair work, such as toilet stoppages, and assists the plumber A person.

The mason/plasterer does tilework and plastering. He works closely with the painters.

The preventive maintenance coordinator, a supervisor, assigns and schedules work to the people in this department, and ensures that the work is done properly. He also evaluates the work of the employees in this department and effectively recommends the hire and termination of employees.

2. The electrical department

This department has nine budgeted positions.

The electrician A, who is not required to have a license, repairs electrical equipment in all Respondent's buildings, including lighting fixtures and appliances. The maintenance mechanic assists the electrician in making repairs.

The maintenance worker essentially changes light bulbs. The storeroom clerk issues equipment to everyone in the engineering department.

3. The HVAC department or boilerroom

This department has 20 budgeted positions, but had 5 vacancies at the time of the instant hearing.

The HVAC mechanic A is a HVAC mechanic who is expected to be able to operate, handle, and repair every piece of equipment in the facility, including absorption units, centrifugal units, and reciprocating compressors.

The HVAC mechanic B is not as skilled as the HVAC mechanic A. The HVAC mechanic B can repair simpler, smaller pieces of equipment such as an ice machine, window air-conditioner, and fan unit. The HVAC mechanic B has been promoted into the HVAC mechanic A position, and occasionally, the HVAC mechanic B works closely with the HVAC mechanic A in the performance of all the A mechanic's work.

The lead HVAC mechanic assigns work to and assists others in their work. This person functions basically as a HVAC mechanic A. Specifically, he installs, inspects, operates, and repairs refrigeration machinery, air-conditioning units, and cooler/freezer units.

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[2] The biomedical manager and biomedical engineering technicians were excluded from the certified unit by the Board in its Supplemental Decision and Direction of Election and were removed from the department of engineering shortly before the instant hearing. The technicians are in a unit consisting of technical employees, represented by Local 1119.

The telephone maintenance persons and telephone operators were removed from the department of engineering in 1991.

There are three clerical employees employed in the department of engineering. The Board excluded them from the unit. 239 NLRB 1135.

[3] In 1981, there was no project engineer. The group was headed by the operations manager, who at the time of the hearing was still the supervisor of the construction group, and who reports to the project engineer.

The HVAC engineer is a licensed refrigeration operator, and operates equipment pursuant to the New York City Code. He maintains air-moving equipment throughout the hospital. He is expected to repair any piece of HVAC equipment in the hospital.

The watch engineer is a stationery engineer. He is required to have a stationery engineer's license, and a refrigeration license. He monitors and operates high pressure boilers and auxiliary equipment, including feed water pumps, deaerating tanks, air-handling equipment, chillers, and absorption equipment and, if necessary, heavy tonnage HVAC equipment.

The fireman/maintenance mechanic maintains the boilerroom, taking water samples, testing the water, and cleaning the boilerroom and boilers. The job description for this position states that the licensure is a New York City pollution certificate. However, none of the employees in this position have such a certificate.

The maintenance mechanic repairs water leaks and stains from leaks. He helps the fireman/maintenance mechanic and the HVAC employees, either in the boilerroom or where HVAC equipment is in use throughout the hospital, for example in a radiator in a patient's room.

The waste-heat supervisor, who does not supervise any employees, is a boiler mechanic who repairs broken boilers throughout the hospital's 44 buildings.

At the time of the instant hearing, there were no incinerator operators because the Respondent has ceased use of its incinerator. There are no plans to resume operation of the incinerator or employ incinerator operators.

4. The construction group

There are 13 budgeted positions in this group.

The construction group is responsible for nonmajor construction and renovation of the facility. It comprises individuals in different trades who work together to complete a project. Some of the projects completed by this group include converting a waiting room and testing area to private practice suites, and renovating a dialysis center to obtain more space around the dialysis stations. Typical of the work done by the construction group includes erecting partitions, moving walls and plumbing, installing a new ceiling and recessed lighting fixtures, new floor, painting, installing bathrooms, installing electrical outlets, and running electrical lines.

Major construction in the hospital, involving the building of the Polak Pavilion, and the installation of sophisticated equipment such as CAT scans, computers, and complex electrical delivery systems, are performed by an outside contractor.

The carpenter A works from blueprints in erecting partitions, walls, and ceilings. He also makes furniture on rare occasions. The carpenter B assists the carpenter A.

The electrician A also works from blueprints in installing wiring, lighting fixtures, outlets, and machinery and equipment in renovated areas.

The maintenance worker is a laborer who cleans the work area and removes garbage. The maintenance plasterer plasters areas requiring such work.

The plumber A works from blueprints in building bathrooms, kitchens, sinks, and showers. The plumber B assists the plumber A.

The painter paints where needed.

5. The dispatcher

The dispatcher works in the office of the director of engineering. He receives calls of problems within the facility and writes a work order, and places it in the appropriate supervisor's workbox. The supervisor assigns the work to an employee, who then performs the job. The work order is signed, as having been completed, by the supervisor in the area where the employee does the work.

F. *The Skilled Nature of the Unit*

Respondent argues that some of the positions in the maintenance and engineering department are not skilled, and accordingly, the unit at issue here is inappropriate as this is not a skilled maintenance unit.

Director of Engineering Williams testified that with respect to the persons in the A classifications, such as painter A, plumber A, electrician A, and HVAC mechanic A, he in most cases is able to obtain employees with the full qualifications of those positions, as set forth in the job description. However, when those persons are not available, those hired have at least most of the qualifications in those job descriptions.

For example, the job description of the HVAC mechanic A requires a vocational high school diploma, 1 year of trade school, a New York City refrigeration license, and 3 to 4 years' experience. The carpenter A requires a high school or trade school diploma and 5 years' experience as a journeyman carpenter. The plumber A requires a high school or trade school diploma, and 5 years' experience as a journeyman mechanic for a licensed plumber. The painter A requires a high school diploma and 5 years' experience as a journeyman painter. The electrician A requires a high school or trade school diploma and 5 years' experience as a journeyman electrician for a licensed electrician.

Similarly, the positions of lead HVAC mechanic, who is essentially a HVAC mechanic A, the watch engineer, who holds two licenses, and the fireman/maintenance mechanic, who maintains the boilers, are in skilled positions.

Director of Engineering Williams testified that the following positions require individuals who are low skilled, having no special training, education, or experience: HVAC mechanic B, carpenter B, plumber B, painter B, electrician B, storeroom clerk, and the maintenance workers in the various departments. He stated that they assisted by cleaning the area and doing unskilled jobs, in the case of the electrical department maintenance worker, changing light bulbs.

However, he also stated that when hiring individuals such as carpenter B, plumber B, or mechanic B, he ideally seeks to hire persons having general mechanical backgrounds, and mechanical experience, but applicants with such credentials are not always available.

Although less skilled, the B positions of painter, plumber, HVAC mechanic, carpenter, and electrician assist the persons in the corresponding A positions, and here more than one person is needed to perform a job, they work with the A person to complete the assignment. Director Williams testified that the persons in the B positions are low skilled, having no special education, training, or experience. However, he seeks to hire for certain B classifications, persons who possess mechanical backgrounds and experience. In addition, even if they are hired without experience, they receive on-

the-job training, and have the skills necessary to complete their assignments.

Although the positions of mason/plasterer, maintenance mechanic, maintenance worker, storeroom clerk, maintenance plasterer, and laborer may also be less skilled than those in the A or B positions, they are part of an identifiable, separate unit of employees engaged in a specific, separable area of responsibility within the hospital. They thus work within the maintenance and engineering department, assisting the other more skilled classifications set forth above, in the completion of the work of the department, and are thus an integral part of the department.

G. *Transfers of Employees*

Employee Stanley Sealy transferred from the food service department to the department of engineering in 1974. He is now a maintenance mechanic. Ralph Damberdella transferred from a porter's position in the housekeeping department to the maintenance group, where he is a maintenance worker. Richardo Ortega transferred from the housekeeping department to the engineering department where is a painter B. A security guard was hired into the engineering department as an electrician.

In the past, a plasterer or mason in the engineering department was laid off, and then obtained a position in the X-ray department.

There was no evidence of transfers from the various groups within the department of engineering.

H. *Comparisons Between the Unit and Other Employees of the Respondent*

The hiring procedure for employees in the engineering department is the same for all other employees in the hospital. They complete an application, have an interview with the personnel department, and receive a medical examination. The same personnel policy manual applies to all employees of the hospital. The probationary period for all employees is 3 months.

All Respondent's employees work 37-1/2 hours per week, including those in the unit here. The engineering department employees' basic work hours are from 7:30 a.m. to 3:30 p.m. or from 8 a.m. to 4 p.m. However, there are others in that department, such as boilerroom personnel, who have shifts which enable the boilerroom to be manned around the clock. The lunch break times for all Respondent's employees are essentially the same.

All nonunion employees receive the same pension and benefits, including a health plan.

There is a cafeteria which is available for use by all employees.

There is one payday for all employees in the hospital, and all employees must wear identification badges. All vacations are approved by supervisors.

The current weekly salaries of the employees working in current classifications in the engineering department range from $388.54 for the laborer to $751.71 for the watch engineer. Those employees in the A classifications earn from $485.06 for the painter A to $547.96 for the electrician A. Those in the B classifications earn from $467.10 for the painter B to $505.29 for the electrician B. Maintenance workers receive $420.48 per week.

Inasmuch as Respondent argues that the engineering department employees do not constitute a separate bargaining unit, and should be included within the service unit represented by Local 1199, a comparison of salaries should be made with that department. The salaries in the service unit range from $385.34 for such classifications as housekeeping worker, aide, transporter, food service worker, attendant, clerk, and messenger to $572.10 for the secretary III.

It should be noted that the classifications sought to be compared by Respondent, the dietary/receiving stores clerk and the receiving/stores clerk in the service unit receive a weekly salary of $406.91 compared to $430.79 received by the engineering department stores clerk.

The personnel in the department of engineering have contact with employees in other parts of the hospital. Thus, when the painter appears in a patient room ready to paint, the housekeepers move the furniture out of the room, and the nurses move the patient into the hallway. Also, when periodic, major cleaning of a patient's room is performed by the housekeepers (cycle cleaning), the maintenance mechanic repairs, at the same time, any device which is broken in that room, such as an oxygen outlet or fan coil unit, so as to minimize the amount of time the room is out of service.

In addition, when repairs are made by an engineering department employee to kitchen equipment, the food service employees protect the area against contamination caused by the repair work. Joseph Orlando, the vice president for support services, testified about an incident which resulted in the engineering department working together with employees in other departments of the hospital. A flood in a janitor's closet was observed by a security guard who notified the housekeeping department, whose housekeepers cleaned the area. Maintenance employees from the engineering department and plumbers removed rags which were forced into the drain, causing the flood.

Further, the HVAC group employees work in proximity to the food service employees, at times working on ducts in the kitchen area. Indeed, there is a schedule whereby one HVAC mechanic is assigned to report to the supervisor of food service every day. That mechanic services all the problems in the food service area. Similarly, the maintenance mechanic reports to the parking lot each day at 4 p.m. to service the car lifts.

Also, the HVAC employees occasionally need the assistance of a security guard in order to gain entry to a physician's apartment to repair a refrigerator or air-conditioner there.

In addition, a HVAC mechanic makes regular rounds performing preventive maintenance checks on refrigeration systems in the food service department.

The electricians have contact with other hospital employees, when they repair equipment and machinery throughout the hospital. In addition, the housekeepers bring broken vacuum cleaners to the maintenance or electrical groups.

Orlando also testified to an incident where a corridor was being painted, while at the same time the housekeepers cleaned the corridor and electricians installed new lighting fixtures.

The contact between members of the construction group and other Respondent's employees are not as frequent as other employees in the engineering department, because the construction group's work usually takes place in vacant areas

of the hospital, where they perform renovations and the building of rooms.

Respondent adduced evidence to attempt to show that the linen room worker who receives and distributes linens and the inventory control person in the storeroom in the stores and receiving department and the storeroom workers in the dietary department who receive foodstuffs and deliver them to kitchen workers have comparable responsibilities with the storeroom clerk in the engineering department. Similarly, Orlando testified that sanitation workers in the kitchen department who clean pots, pans, and trays had comparable duties to the helpers in the engineering department, who help others in their department. However, Orlando stated that those kitchen employees' duties were more in the nature of cleaning than assisting. A comparison was made between the cycle cleaners who wash walls and the painters who paint the walls.

Orlando also testified that the duties of the housekeeping department's groundskeepers who repair fencing are comparable to that of engineering department employees who maintain the sidewalks. One incident was cited where they worked together when oil spilled from an oil tank onto the hospital's lawn. While the boilerroom employees worked to contain the spill, the housekeeping workers removed the sod to limit the damage caused by the spill.

Respondent also argues that the qualifications, training, and skills of maintenance workers, using simple handtools, are comparable to those of housekeeping workers in the hospital's service unit who perform cleaning, vacuuming, and floor buffing throughout the facility.

I. *Area Practice*

Joseph Orlando, the vice president for support services, testified at the 1984–1985 hearing that two New York City hospitals that he was familiar with, Flower Hospital and Beth Israel Hospital, neither had separate units of maintenance and engineering department employees. At Flower Hospital, a small department of maintenance employees employed in the engineering department were represented by Local 1199 in one bargaining unit which included housekeeping employees. At Beth Israel Hospital, maintenance employees in the engineering department were represented by Local 1199 in a unit which included housekeeping and food service workers. Orlando stated that he was not aware of any other hospital in New York City in which engineering department employees were represented by a union in a separate bargaining unit.

It should be noted in this connection that in 1979, a certification was issued to Local 1199 for a unit of service employees employed by Respondent, which expressly excluded the maintenance and engineering employees, and in 1980, Respondent entered into a collective-bargaining agreement with Local 1199 covering employees in that unit.

Similarly, in 1981, Local 1199 was certified as the collective-bargaining representative of Respondent's technical employees, which certification specifically excludes its service employees and maintenance employees.

III. ANALYSIS AND DISCUSSION

A. *The Collective-Bargaining Unit*

The question here is whether the employees sought are an ''identifiable group with a community of interest that is sufficiently separate or distinct from the other . . . employees to warrant separate representation.'' *Allegheny General Hospital*, 239 NLRB 872, 878 (1978).

In *Garden City Hospital (Osteopathic)*, 244 NLRB 778 (1979), the Board explained that ''in determining the appropriateness of a separate maintenance unit we would continue to apply the traditional test for such units which includes considering such factors as mutuality of interest in wages, benefits, and working conditions; commonality of skills and supervision; frequency of contact with other employees; lack of interchange and functional integration; and area practice and patterns of bargaining.''

Here, the employees in the engineering department are dispatched to their jobs by their supervisors. Such employees work in separate groups with supervisors directing their work. Those supervisors report to the director of engineering. Thus, there is separate supervision for such employees, as compared with other hospital employees. All the maintenance and engineering department workers have their own shop area in the basement of one of Respondent's buildings, with their own locker room area.

Although the maintenance and engineering employees, with the exception of the boilerroom personnel, spend the vast majority of their time outside their shop, performing tasks around the hospital, their contact with other nonmaintenance and engineering department employees is limited to receiving information concerning the repairs required on certain equipment, and clearing areas prior to performing their duties. Although it is true that one employee's job is to take care of the dietary department's daily repair needs, and he reports to that area's supervisor, and another reports to the parking lot daily, this is not the case with other maintenance and engineering employees. They remain under the supervision of their group supervisor. In addition, although a supervisor outside the engineering department must sign off on work performed by these employees, the engineering department is responsible for the proper performance of the work by such employees, its supervisors direct their work, and discipline is instituted by the engineering department.

There are no temporary transfers between employees in the engineering department and employees outside that department. Permanent transfers have been limited. In the past, there have been four permanent transfers of employees into the department from positions outside that department.

The employees in the engineering department possess greater skills than those outside the department or are helpers or assistants to those possessing greater skills. Although Respondent adduced evidence that certain service unit employees may possess similar skills and perform similar duties as the maintenance workers and laborer; nevertheless, such engineering department employees work exclusively for the engineering department, assisting the higher skilled employees in performing engineering department functions.

The wage rates received by employees in the maintenance and engineering department are generally higher, and in the case of the ''A'' categories, much higher than those in the service unit.

Although the employees in the engineering department enjoy many of the same benefits, such as holidays, vacation pay, cafeteria availability, and other benefits as other nonunit employees, this aspect of commonality cannot outweigh the

other factors, set forth above, which distinguish the engineering department employees from others. Similarly, Respondent's evidence of area practice in which no other New York City hospital had a separate maintenance and engineering employees' unit, but rather had units of such employees encompassed within units of service department employees, food service workers, and housekeeping employees, is somewhat different than the situation at Respondent's facility, where separate units of service department employees were specifically excluded the employees at issue here. The General Counsel argues that Respondent's voluntary and ''historical exclusion'' of the maintenance and engineering department employees from the service unit precludes it from arguing that a separate unit of maintenance and engineering employees is inappropriate, and that such employees properly belong in the service unit. I reject the General Counsel's argument. Had Respondent sought to include the maintenance and engineering department employees in a broader collective-bargaining unit sought by Local 1199, it would undoubtedly have been faced with an unfair labor practice charge by Local 144 which had been determined by the Board, both in an unfair labor practice case, and by certification, to be the exclusive collective-bargaining representative of these employees,

I, accordingly, find and conclude that the employees in the collective-bargaining unit alleged here share a separate community of interest, and that the unit alleged is an appropriate collective-bargaining unit.

Furthermore, the Board's Final Rule sets forth as an appropriate collective-bargaining unit ''all skilled maintenance employees.''

In its second proposed notice of rulemaking, the Board, considered and rejected arguments similar to that raised by Respondent—that the employees alleged here belong in an overall service department unit—because their skill levels occasionally do not exceed those of other service and maintenance employees and that they work throughout the hospital and have frequent contact with other employees and for other reasons. However, the Board, having considered those arguments, nevertheless decided that a separate unit of skilled maintenance employees was appropriate.

The Board also decided that such a unit ''should generally include all employees involved in the maintenance, repair, and operation of the hospitals' physical plant systems, as well as their trainees, helpers, and assistants.'' 284 NLRB 1562.

Accordingly, the collective-bargaining unit alleged here is appropriate under the Board's Final Rule.

B. *The Violation*

Respondent's answer admits, and I find and conclude, that since on or about October 1, 1980, Respondent has refused, and since that date has continued to refuse, to recognize and bargain collectively with Local 144 as the exclusive collective-bargaining representative of Respondent's employees in the certified, appropriate collective-bargaining unit.

C. *Delay and Turnover*

Respondent argues that even assuming the alleged collective-bargaining unit is found to be appropriate, a bargaining order should not be issued because of the length of time since the certification of this unit and the extent of turnover experienced in the unit.

When an employer refuses to bargain with a union while pursuing its right to judicial review, the certification year ''commences on the date of the parties' first bargaining session following final affirmance of the Board's order.'' *Van Dorn Plastic Machinery Co*., 300 NLRB 278 (1990). Respondent has, following the certification of Local 144, continuously refused to bargain with it. Accordingly, the certification year has not yet begun.

Absent unusual circumstances, the certified union enjoys an irrebuttable presumption of majority status during its certification year. *Brooks v. NLRB*, 348 U.S. 96, 98, 104 (1954). Respondent argues that unusual circumstances are presented here, in view of the 13-year period since the certification was issued. Respondent also argues that of the 56 employees currently employed in the unit, only 20 of those were employed at the time of the election, further casting doubt on the reliability of the presumption of the majority status of Local 144.

In *NLRB v. Star Color Plate Service*, 843 F.2d 1507 (1988), the Second Circuit Court of Appeals affirmed its *Patent Trader* rationale. *NLRB v. Patent Trader, Inc*., 426 F.2d 791 (2d Cir. 1970). In *Patent Trader*, the court found that there was both passage of time and ''repudiation of the union by a majority of the employees, but nevertheless enforced the Board's bargaining order, noting that the union had been certified and that requiring still another Board election in such a situation undermines the central purpose of the National Labor Relations Act, since it gives an employer an incentive to disregard its duty to bargain in the hope that over a period of time a union will lose its majority status. 426 F.2d at 792.

Similarly, in *Glomac Plastics v. NLRB*, 592 F.2d 94 (1979), the Second Circuit Court of Appeals, noting that 6 years had passed since the certification of the union, 4-1/2 years of which were attributable to Board delay, nevertheless affirmed the Board's bargaining order remedy.

In *Star Color Plate*, supra, the Second Circuit Court of Appeals critically noted that more than 5 years had elapsed between the certification of the union and the Board's finding of a violation. The court nevertheless enforced the Board's bargaining order, but also ordered the Board to notify the current employees of their statutory right to petition for a decertification election.

Respondent's reliance on *NLRB v. Connecticut Founding Co*., 688 F.2d 871 (2d Cir. 1982), and *NLRB v. Nixon Gear, Inc*., 649 F.2d 906 (2d Cir. 1981), is misplaced. Both cases were distinguished by the Second Circuit Court of Appeals in *Star Color Plate*, supra, 843 F.2d at 1509, on the grounds that in both, the Board had improperly failed to hold hearings on ''prima facie valid post-election challenges filed by the employers, which, if upheld, would have required the setting aside of the . . . elections.''

I accordingly find and conclude that a bargaining order is an appropriate remedy here.

CONCLUSIONS OF LAW

1. The Respondent, The Long Island College Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

2. Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees in the maintenance of plant and engineering department, excluding chief engineers, assistant chief engineers, clerk and maintenance supervisors, as defined in Section 2(11) of the Act.

4. At all times material, Local 144 has been the exclusive collective-bargaining representative of the employees in the unit described above.

5. Since on or about October 1, 1980, by failing and refusing to recognize and bargain collectively with Local 144 as the exclusive collective-bargaining representative of the employees in the unit described above, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to bargain collectively with Local 144 as the exclusive collective-bargaining representative of the employees in the certified, appropriate collective-bargaining unit, set forth above. Inasmuch as Local 144 has not yet enjoyed its certification year, I shall recommend that the initial certification year be extended as if it had not expired.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, The Long Island College Hospital, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and, on request, bargain collectively with Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL–CIO as the exclusive collective-bargaining representative of its employees in the following certified, appropriate collective-bargaining unit:

> All full-time and regular part-time employees in the maintenance of plant and engineering department, excluding chief engineers, assistant chief engineers, clerk and maintenance supervisors, as defined in Section 2(11) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the certified unit found appropriate respecting rates of pay, hours of work, or other terms and conditions of employment and, if an understanding is reached, embody it in a written and signed agreement. The Union's certification year shall extend 1 year from the date that such good-faith bargaining begins.

(b) Post at its Brooklyn, New York facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and, on request, bargain collectively with Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following certified, appropriate collective-bargaining unit:

> All full-time and regular part-time employees in the maintenance of plant and engineering department, excluding chief engineers, assistant chief engineers, clerk and maintenance supervisors, as defined in Section 2(11) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL–CIO as the exclusive collective-bargaining representative of our employees in the certified unit found appropriate respecting rates of pay, hours of work, or other terms and conditions of employment and, if an understanding is reached, embody it in a written and signed agreement.

THE LONG ISLAND COLLEGE HOSPITAL